

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

<div>UNITE HERE! LOCAL 8, AFL-CIO</div> <div>Petitioner,</div> <div>SPACE NEEDLE, LLC</div> <div>Intervenor,</div> <div>NATIONAL LABOR RELATIONS BOARD,</div> <div>Respondent.</div>	<div><b>No. 15-70377</b></div> <div>NLRB No. 19-CA-098908</div> <div>Western District of Washington, Seattle</div>
<div>SPACE NEEDLE, LLC</div> <div>Petitioner,</div> <div>NATIONAL LABOR RELATIONS BOARD,</div> <div>Respondent.</div>	<div><b>No. 15-70520</b></div> <div>NLRB Nos. 19-CA-098988 19-CA-107024 19-CA-098936 19-CA-098908 19-CA-108459</div> <div>Western District of Washington, Seattle</div>
<div>NATIONAL LABOR RELATIONS BOARD,</div> <div>Petitioner,</div> <div>SPACE NEEDLE, LLC,</div> <div>Respondent.</div>	<div><b>No. 15-70630</b></div> <div>NLRB Nos. 19-CA-098988 19-CA-107024 19-CA-098936 19-CA-098908 19-CA-108459</div> <div>No District.</div>

**SPACE NEEDLE LLC's MOTION FOR PROCEDURAL ORDER TO  
CLARIFY TIME ALLOTTED FOR ORAL ARGUMENT**

## **INTRODUCTION**

Our firm represents Space Needle, LLC (“the Space Needle”) in the above-captioned matter. This matter is scheduled for oral argument before the Court on June 8, 2017 at 9:00 a.m.

On May 24, 2017, Stacy Brebner of the 9<sup>th</sup> Circuit Court of Appeals Clerk’s Office in Seattle contacted Counsel for the Space Needle inquiring as to how the 30 minutes of time scheduled for oral argument should be allotted between the three parties, UNITE HERE! Local 8 (the “Union”), the National Labor Relations Board (“NLRB” or the “Board”), and the Space Needle. The Clerk recommended that Counsel file this Motion for a Procedural Order to Clarify Time Allotted for Oral Argument with the Court to bring the issue to the Court’s attention.

The same day, (May 24, 2017), Counsel notified opposing counsel of the issue by email. On May 25, 2017, Counsel provided a copy of this motion to opposing counsel inquiring as to whether they objected to this motion. Citing FRAP 15.1, Counsel for the Board has indicated that the NLRB’s position is that it should have 15 minutes of oral argument time allotted because it is responding to two separate petitions, and further that it should argue after the Union and the Space Needle. Board Counsel indicated it would “not oppose a request to extend both petitioners’ time to 10 minutes each and the Board’s time to 20 minutes.”

The Board's position is that the Board's time should equal the combined time of the two Petitioners.

Counsel for the Union responded that the Union intends to dismiss its Petition for Review, given that the parties have entered into a new collective bargaining agreement. Consistent with the suggestion of Counsel for the NLRB, the Space Needle respectfully proposes that the order and allotment of time for oral argument be as follows: Union (10 minutes); Space Needle (10 minutes); and NLRB (20 minutes). If, however, the Union does dismiss its Petition for Review as it has indicated it intends to do, the Space Needle respectfully proposes that the order and allotment of time be as follows: Space Needle (15 minutes); NLRB (15 minutes).

### **GROUND AND RELIEF SOUGHT**

For the reasons explained herein, the Space Needle seeks an Order from the Court granting each of the three parties in this proceeding their own allotments of time for oral argument. The Space Needle was the respondent in the unfair labor practices proceeding in this matter before the National Labor Relations Board. The Board issued a final Decision and Order (the Board's "Decision") on January 30, 2015, reported at 362 NLRB No. 11.

On February 10, 2015, the Space Needle filed a Petition for Review of the Board's Decision in the United States Court of Appeals for the District of

Columbia Circuit (*see* Case No. 15-70520, DktEntry 2). The Space Needle's Petition sought review of the Board's Decision finding that the Space Needle violated Sections 8(a)(1), (3), and (5) of the National Labor Relations Act ("the Act") by failing to reinstate payroll dues deduction despite prior agreement, polling its employees, encouraging or soliciting employees to resign from UNITE HERE! Local 8, coercing employees, interrogating or making coercive statements to an employee, failing to recall employees from layoff, or otherwise discriminating against employees, interfering with or restraining employees in the exercise of the rights guaranteed them by Section 7 of the Act. *Id.* (Additional issues on review are included in the Space Needle's Petition for Review. *Id.*) The Board's position is adverse to the issues raised in the Space Needle's Petition for Review. The Union is also adverse to the issues raised in the Space Needle's Petition for Review.

On February 5, 2015, the Union filed a Petition for Review in this Court (Case No. 15-70377, DktEntry 1). The Union's Petition sought review of the Board's Decision which denied its request to give retroactive effect to dues checkoff authorizations. *Id.* The Board's position is adverse to the issue addressed in the Union's Petition for Review. The Space Needle's position is also adverse to the Union's arguments.

On February 19, 2015, the D.C. Circuit transferred the Space Needle's Petition for Review to this Court (*see* Case No. 15-70520, DktEntry 1). On February 27, 2015, the Board filed a Cross-Application for Enforcement of its Decision (*see* Case No. 15-70630, DktEntry 1). This Court consolidated these three pending, related cases, Nos. 15-70377, 15-70520, and 15-70630, on March 6, 2015 under Case No. 15-70322 (*see* DktEntry 20). The three parties involved in this consolidated proceeding are adverse to one another. No party is aligned with another party. Rather, the Space Needle opposes the Board's Decision, the Union opposes a portion of the Board's Decision, the Board opposes both the Union and the Space Needle's appeal issues, and the Space Needle and the Union oppose each other's appeal issues.

As the Space Needle is adverse both to the Union's appeal issue and the NLRB's enforcement action, the Space Needle requests that its time for oral argument not be shared with either the Union or the NLRB. Consistent with the suggestion of Counsel for the NLRB, the Space Needle respectfully proposes that the order and allotment of time for oral argument be as follows: Union (10 minutes); Space Needle (10 minutes); and NLRB (20 minutes). If, however, the Union does dismiss its Petition for Review as it has indicated it intends to do, the Space Needle respectfully proposes that the order and allotment of time be as follows: Space Needle (15 minutes); NLRB (15 minutes).

WHEREFORE, the Space Needle respectfully requests that the Court grant this motion and clarify the amount of time specifically allotted to each party for oral argument, and the order of argument pursuant to FRAP Rule 15.1.

Respectfully submitted this 25<sup>th</sup> day of May, 2017.

*s/Brian P. Lundgren*

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused Space Needle's *Motion to Clarify Time Allotted for Oral Argument* to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 25, 2017.

I certify that the following participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system:

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I further certify that I caused a courtesy copy of the Space Needle's *Motion to Clarify Time Allotted for Oral Argument* to be delivered this day via electronic mail, and placed the same in the U.S. Mail, postage prepaid, addressed to:

Julia Dube [dube.julia@gmail.com]  
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Dated this 25<sup>th</sup> day of May, 2017.

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